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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-78

MEL KAHN, etc.,

Appellant,

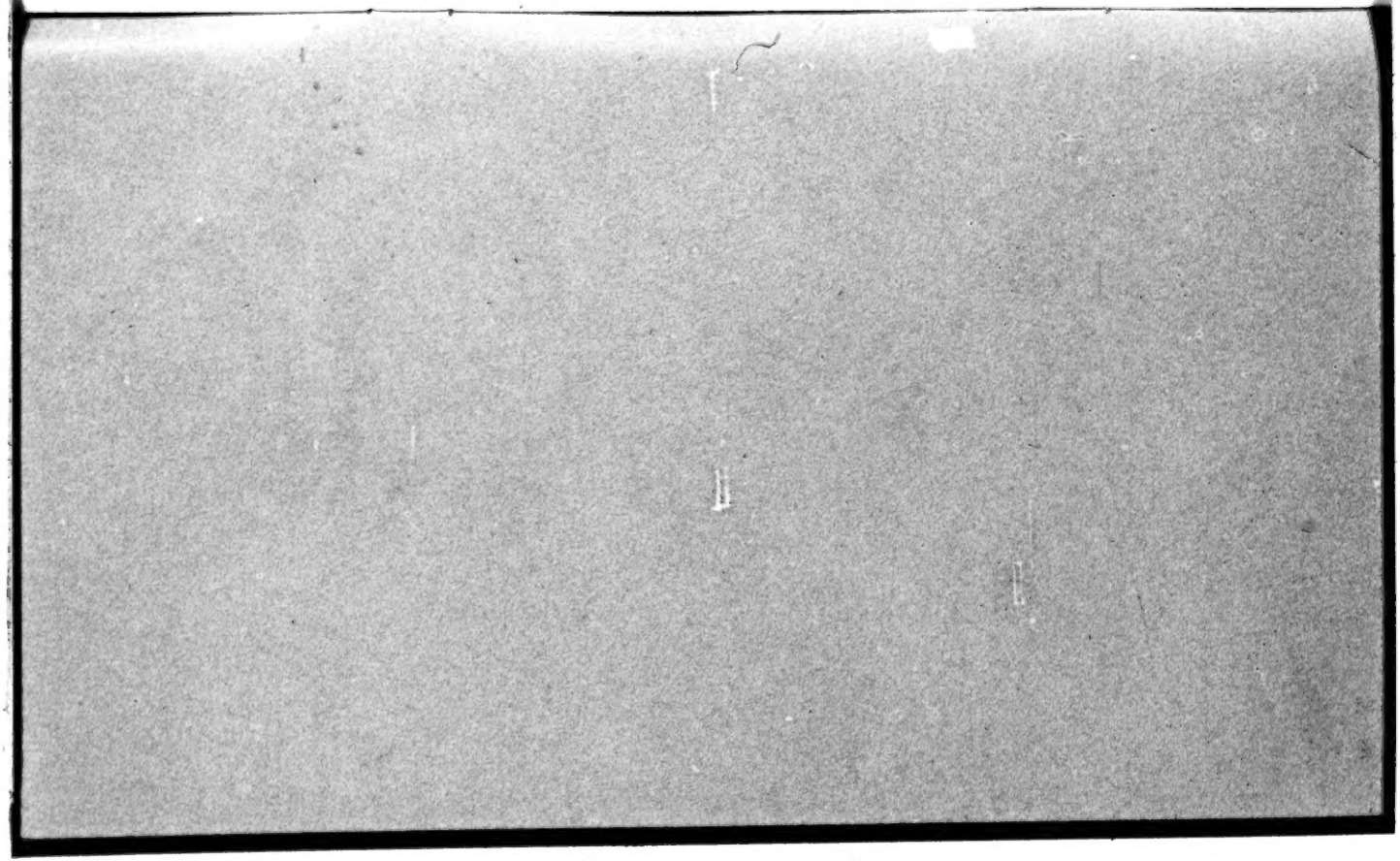
—v.—

ROBERT L. SHEVIN, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT FILED JULY 6, 1973
PROBABLE JURISDICTION NOTED OCTOBER 23, 1973



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Chronological List of Relevant Docket Entries

DATE OF FILING	
October 26, 1971	Complaint together with copy of Exhibit: Florida Statutes, Exemption, Sec. 196.191(7) attached thereto
December 3, 1971	Answer of defendants
January 18, 1972	Plaintiff's motion for summary judgment
January 21, 1972	Affidavit of plaintiff
March 8, 1972	Motion to intervene
March 8, 1972	Intervenor's motion for summary judgment
April 5, 1972	Defendants' motion for summary judgment
April 6, 1972	Order granting motion to intervene and setting cause for final hearing
April 21, 1972	Memorandum opinion and final judgment (Circuit Court, Eleventh Judicial Circuit, Dade County, Florida)
May 15, 1972	Notice of appeal
May 15, 1972	Assignments of error
May 15, 1972	Directions to clerk
May 25, 1972	Cross-assignments of error
February 7, 1973	Opinion and final judgment (Supreme Court of Florida)
March 8, 1973	Mandate from the Supreme Court of Florida
May 4, 1973	Notice of appeal to the United States Supreme Court

Complaint

IN THE

CIRCUIT COURT
OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA

IN AND FOR DADE COUNTY

No. 71-20673

THOMAS A. TESTA

MEL KAHN, on behalf of himself
and all others similarly situated,

Plaintiffs,

vs.

J. ED STRAUGHN and A. H. BLAKE,

Defendants.

COME Now the plaintiffs, by and through their undersigned attorney, and sue the defendants, J. Ed Straughn and A. H. Blake, and allege:

1. This is a class action brought pursuant to Rule 1.220 of the Florida Rules of Civil Procedure in that the question presented is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court. The plaintiffs seek declaratory and injunctive relief and invoke the court's jurisdiction pursuant to Florida Statute, Sec. 86.011 and the Constitution of the State of Florida, Art. V, Sec. 6(3), respectively, in addition to the general equity powers of this court.

2. The plaintiff, Mel Kahn, a widower, is a bona fide resident of and a real property owner in the State of Florida.

3. The defendant J. Ed Straughn is the director of the Department of Revenue, the regulatory and supervisory body of the Dade County Tax Assessor.

4. The defendant A. H. Blake is the Dade County Tax Assessor.

5. On or about January 28, 1971, the plaintiff Kahn attempted to make proper application for property tax exemption to the defendants, their agents, employees or servants, pursuant to Florida Statute Sec. 196.191(7), a copy of which is attached hereto and made a part hereof. Plaintiff Kahn was not allowed to complete such application, in that he failed to comply with the statute, said statute applying to widows and not widowers.

6. Florida Statute Sec. 196.191(7) is unconstitutional as applied to all widowers seeking tax exemptions under its provisions in that the defendants' interpretation and construction of said statute violates the equal protection and due process clauses contained in Article I, Sections 2 and 9, of the Constitution of the State of Florida. By its force and effect, the aforementioned statute, as interpreted, construed and applied to all widowers in the State of Florida, unconstitutionally prohibits a surviving male spouse from securing the benefits of its provisions solely on the basis of sex discrimination.

7. No adequate administrative remedy or adequate remedy at law is available to plaintiffs.

8. According to the dictates of *Government Employees* v. *Windsor,* 353 U.S. 364, 1 L.Ed.2nd 894, 77 S.Ct. 838 (1957), as interpreted and construed in *England* v. *Louisiana State Board of Medical Examiners,* 375 U.S. 411, 11 L.Ed.2nd 440, 84 S.Ct. 461 (1964), plaintiffs inform this court that they further maintain that the aforementioned application of Florida Statute Sec. 196.191(7) is violative of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States, but do not challenge the constitutionality of said statute on Federal grounds in this court. Plaintiffs expose these Federal claims here only for the purpose of complying with *Government Employees* v. *Windsor,* supra, so that the state statute may be construed in light of these claims and plaintiffs intend, should this State Court hold against them on the question of state law, to litigate these questions in the United States District Court for the Southern District of Florida for disposition of their Federal contentions.

WHEREFORE, the plaintiff respectfully prays, on behalf of himself and all other similarly situated, that this court:

a. Declare Florida Statute Sec. 196.191(7) unconstitutional as applied to plaintiff and members of his class.

b. Declare the exemption, which is the subject matter of Florida Statute Sec. 196.191(7), to be construed to include plaintiff and members of his class by an interpretation of the term "widows" to include "widowers".

c. Enjoin defendants, their agents, servants and employees from the future enforcement of Florida Statute Sec.

196.191(7) in any manner which deprives plaintiff and the class he represents of its benefits.

d. Grant such other and further relief as this Court may deem just and proper.

BILL HOPPE, Esq.
Counsel for Plaintiffs
c/o ACLU of Florida
2nd Floor, Concord Bldg.
66 W. Flagler Street
Miami, Florida 33130

STATUTE ANNEXED TO COMPLAINT

FLORIDA STATUTES

Ch. 196 EXEMPTION § 196.191

196.191 Property exempt from taxation

The following property shall be exempt from taxation:

(7) Property to the value of five hundred dollars to every widow and to every person who is a bona fide resident of the state and has lost a limb or been disabled in war or military hostilities or by misfortune.

Answer

IN THE

CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA

IN AND FOR DADE COUNTY

No. 71-20673 (Judge Testa)

[CAPTION OMITTED]

COME Now the defendants, by and through their undersigned counsel, and answer the complaint filed herein as follows:

1. The defendants are without knowledge as to the allegations set forth in paragraphs 1, 2 and 5 of the complaint.

2. The defendants admit the allegations set forth in paragraphs 3 and 4 of the complaint.

3. The defendants deny the allegations set forth in paragraphs 6, 7 and 8 of the complaint.

4. The defendants deny each and every allegation not specifically admitted herein.

WHEREFORE, the defendants, Dade County, Florida, having answered the complaint filed herein, respectfully pray that the complaint filed herein be dismissed with prejudice and at cost to the plaintiffs.

STUART SIMON
Dade County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

By: MURRAY A. GREENBERG
Asst. County Attorney

Affidavit

IN THE

CIRCUIT COURT
OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA

IN AND FOR DADE COUNTY

No. 71-20673 (Testa)

[CAPTION OMITTED]

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

BEFORE ME, the undersigned authority, personally appeared MEL KAHN, who, first being duly cautioned and sworn, deposes and says:

1. That affiant is an adult bona fide resident of and a real property owner in the State of Florida.

2. That affiant is a widower.

3. That on or about January 28, 1971, affiant attempted to make proper application for a property tax exemption to the Dade County Tax Assessor's office, pursuant to Florida Statutes §196.191(7).

4. That affiant was informed that he failed to comply with the statute in that said statute applied only to widows and not to widowers.

5. That affiant was not allowed to complete said application due to the aforementioned reason.

6. That affiant was unable to secure the property tax exemption sought pursuant to Florida Statutes §196.191(7) due to the fact that he is a widower.

FURTHER AFFIANT SAYETH NOT.

MEL KAHN

SWORN TO and subscribed before me
this 21 day of Jan 1972.

IRENE FIGUERA
Notary Public
State of Florida at Large

My commission expires: 5-18-75

Plaintiff's Motion for Summary Judgment

IN THE

CIRCUIT COURT
OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA

IN AND FOR DADE COUNTY

No. 71-20673 (Testa)

[CAPTION OMITTED]

Plaintiff, by and through his undersigned attorney, respectfully moves this Honorable Court for the entry of a summary judgment in favor of the plaintiff and the class he represents for the reason that there is no genuine issue as to any material fact and they are thus entitled to a judgment as a matter of law.

The plaintiff and the class he represents further state that, in support of this motion, all pleadings and affidavits filed in this cause will be relied upon.

Dated: January 14, 1972.

BILL HOPPE, Esq.
Counsel for Plaintiff
c/o ACLU of Florida
2nd Flr., Concord Bldg.
66 W. Flagler Street
Miami, Florida 33130

Motion to Intervene

IN THE

CIRCUIT COURT
OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA

IN AND FOR DADE COUNTY

Case No. 71-20673

[CAPTION OMITTED]

ROBERT L. SHEVIN as Attorney General of the State of Florida moves to intervene pursuant to RCP 1.230 and as grounds therefore states:

1. The complaint attacks the constitutionality of Section 196.191 (7), Florida Statutes.

2. Section 86.091, Florida Statutes, provides that if any statute is alleged to be unconstitutional:

> ". . . the Attorney General or the State Attorney of the judicial circuit in which the action is pending shall be served with a copy of the complaint and be entitled to be heard."

ROBERT L. SHEVIN
Attorney General

BARRY SCOTT RICHARD
Assistant Attorney General
Chief, South Florida Division

Intervenor's Motion for Summary Judgment

IN THE

CIRCUIT COURT
OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA

IN AND FOR DADE COUNTY

Case No. 71-20673

[CAPTION OMITTED]

ROBERT L. SHEVIN as Attorney General of the State of Florida, intervenor, hereby moves for summary judgment on the following grounds:

1. There are no disputed issues of fact.

2. Section 196.191 (7) is constitutional on its face and as applied to the plaintiffs.

3. This Court is without jurisdiction to extend the provisions of Section 196.191 (7), Florida Statutes, to include the plaintiffs.

ROBERT L. SHEVIN
Attorney General

BARRY SCOTT RICHARD
Assistant Attorney General
Chief, South Florida Division

Defendants' Motion for Summary Judgment

IN THE

CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA

IN AND FOR DADE COUNTY

No. 71-20673 (Judge Testa)

[CAPTION OMITTED]

COME Now the defendants, J. Ed Straughn and A. H. Blake, by and through their undersigned counsel, and move this Honorable Court to grant summary judgment in their favor. As grounds therefore they state that there are no genuine issues of material fact and would rely upon the memorandum submitted by them on February 4, 1972 and the memorandum of the intervenor submitted on February 16, 1972.

STUART SIMON
County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

By: MURRAY A. GREENBERG
Assistant County Attorney

Order Granting Motion to Intervene and Setting Cause for Final Hearing

IN THE

CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA

IN AND FOR DADE COUNTY

No. 71-20673 (Judge Testa)

[CAPTION OMITTED]

Upon consideration of the premises herein, it is hereby

ORDERED and ADJUDGED:

1. That the motion of Robert L. Shevin, as Attorney General of the State of Florida, to intervene in this lawsuit be, and the same hereby is, granted.

2. That the Court will call for final hearing all pending motions in this cause on Wednesday, April 12, 1972, at 1:00 o'clock P.M.

DONE and ORDERED in Chambers, at Miami, Dade County, Florida, on this 6 day of April, 1972.

THOMAS A. TESTA
Circuit Judge

BARRY SCOTT RICHARD
Assistant Attorney General
State Office Building
1350 N.W. 12th Ave., Room 530
Miami, Florida 33136

Copies furnished to:

MURRAY A. GREENBERG
Assistant County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

COLSON & HICKS
Second Floor—Concord Building
Miami, Florida 33130
(Attn: Bill Hoppe)

Memorandum Opinion and Final Judgment, Circuit Court for the Eleventh Judicial Circuit, Dade County, Florida

(April 21, 1972)

This document is printed in the Appendix to the Jurisdictional Statement at A1-A3.

Notice of Appeal

IN THE

CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA

IN AND FOR DADE COUNTY

No. 71-20673 (Judge Testa)

MEL KAHN, ETC.,

Plaintiff,

vs.

J. ED STRAUGHN and A. H. BLAKE,

Defendants.

ROBERT L. SHEVIN, as Attorney General of the State of Florida, Intervenor, takes and enters his appeal to the Supreme Court of Florida to review the Memorandum Opinion and Final Judgment in favor of the Plaintiff rendered by the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, bearing date of 21st day of April 1972, and rendered and recorded in Book Number 7672 at page number 416 on April 25, 1972.

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was served by mail upon Honorable Bill Hoppe, c/o ACLU of Florida, 66 West Flagler Street, Miami, Florida 33130, and Honorable Murray A. Greenberg, Assistant County Attorney, 1626 Dade County Courthouse, Miami, Florida 33130, this 12th day of May, 1972.

ROBERT L. SHEVIN
Attorney General
BARRY SCOTT RICHARD
Assistant Attorney General

Opinion and Final Judgment, Supreme Court of Florida

(February 7, 1973)

This document is printed in the Appendix to the Jurisdictional Statement at A4-A7.

Mandate From Supreme Court of Florida

To the Honorable, the Judges of the Circuit Court .... for the Eleventh Judicial Circuit of Florida. Greeting:

WHEREAS, Lately in the Circuit Court of .... for the County of Dade in a cause wherein

MEL KAHN, ETC., was plaintiff

and

J. ED STRAUGHN and A. H. BLAKE, were defendant

No. 71-20673 (Judge Testa)

the Judgment of said Circuit Court ..... was rendered April 25, 1972 as by the inspection of the transcript of the record of the said Circuit Court ..... which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

AND WHEREAS, at the January Term of said Supreme Court holden at Tallahassee, A. D. 1973, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 7th day February A. D. 1973 the said Supreme Court rendered its opinion and judgment in said cause as per copy thereof hereto attached and made a part hereof, case no. 42,371.

In Consideration Whereof, It Is Ordered by the Court that the appellants do have and recover of and from the appellee

costs in this behalf expended herein taxed at Twenty-Five Dollars, and that all other costs shall be taxed in the court in which the appeal was entered, therefore,

YOU ARE HEREBY COMMANDED, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Judgment of the Circuit Court ..... notwithstanding.

WITNESS, The Honorable VASSAR B. CARLTON Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 8th day of March 1973.

(Signature illegible)
Clerk Supreme Court of Florida.